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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
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12 BRIAN ORR, ) Case No. CV 15-08246 MMM (MRW)  
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14 Petitioner, )  
15 vs. ) ORDER SUMMARILY DISMISSING  
16 JACK FOX, Warden, ) HABEAS ACTION  
17 ) L.R. 72-3.2  
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20 Pursuant to Habeas Rule 4 and Local Rule 72-3.2, the Court summarily  
21 dismisses this habeas action without prejudice for failure to state a claim upon  
22 which relief may be granted.

23 \* \* \*

24 Petitioner is a prisoner at the federal prison facility at Lompoc. He filed a  
25 habeas action in this Court under 28 U.S.C. § 2241. Pursuant to the Court's  
26 referral order (Docket # 2), Magistrate Judge Wilner preliminarily reviewed the  
27 petition. Judge Wilner concluded that the gist of the petition was to express  
28 Petitioner's dissatisfaction with his housing assignment to the Lompoc facility.

1 (Docket # 3 at 1.) Additionally, Petitioner raised broad complaints with his  
2 underlying conviction and his access to law library materials while in custody.

3 Judge Wilner informed Petitioner that it was “not clear what the basis for  
4 Petitioner’s claim is.” (Id.) The screening order advised Petitioner that he could  
5 only obtain habeas relief by establishing that he was “in custody ‘in violation of  
6 the Constitution or laws or treaties of the United States.’” (Id. (quoting 28 U.S.C.  
7 § 2241).) Judge Wilner concluded that the minimal allegations in the petition did  
8 “not provide adequate information” to allow the Court or the government “to  
9 evaluate Petitioner’s claim.” (Id. at 2.) Judge Wilner directed Petitioner to submit  
10 a supplemental statement clearly explaining the basis for his claims of  
11 constitutional violations.

12 Petitioner recently filed that statement. (Docket # 5.) Petitioner explained  
13 that his “concerns” focus on his access to a computer to conduct undefined legal  
14 research, his “medical considerations,” and his request that the Bureau of Prisons  
15 transfer him to Terminal Island or release him to home confinement. (Id.)  
16 Petitioner submitted a lengthy stack of medical records and communications with  
17 prison officials (including a note showing that he was scheduled to see a  
18 neurosurgeon). (Id. at 19.)

19 \* \* \*

20 Petitioner’s current habeas filing fails on its face to state a claim upon which  
21 relief could be granted. If it “appears from the application that the applicant or  
22 person detained is not entitled” to habeas relief, a court may dismiss a habeas  
23 action without ordering service on the responding party. 28 U.S.C. § 2243; see  
24 also Rule 4 of Rules Governing Section 2254 Cases in United States District  
25 Courts (petition may be summarily dismissed if petitioner plainly not entitled to  
26 relief); Local Civil Rule 72-3.2 (magistrate judge may submit proposed order for  
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1 summary dismissal to district judge “if it plainly appears from the face of the  
2 petition [ ] that the petitioner is not entitled to relief”).

3 The traditional and statutory function of a writ of habeas corpus “is to  
4 secure release from illegal custody.” Preiser v. Rodriguez, 411 U.S. 484 (1973).  
5 To maintain a habeas action, the prisoner must demonstrate that he suffered a  
6 cognizable constitutional injury “likely to be redressed by a favorable judicial  
7 decision.” Burnett v. Lampert, 432 F.3d 996, 999 (9th Cir. 2005) (quotation  
8 omitted). If the injury cannot be remedied by “the sort of equitable relief we may  
9 grant in response to a habeas petition” – that is, release from custody – a federal  
10 court has no jurisdiction. Id.

11 For this reason, habeas relief under Section 2241 is typically reserved for  
12 cases in which an action by the Bureau of Prisons improperly affects the length of  
13 a prison sentence. See, e.g., Schleining v. Thomas, 642 F.3d 1242 (9th Cir. 2011)  
14 (calculation of release date based on good time credits). Prisoners have “no right  
15 to be at any particular prison” within the federal system. Grayson v. Rison, 945  
16 F.2d 1064, 1067 (9th Cir. 1991). The BOP has wide discretion to “manage and  
17 regulate all federal penal and correctional institutions.” Reeb v. Thomas, 636 F.3d  
18 1224, 1226 (9th Cir. 2011). Federal courts “lack jurisdiction to review” claims  
19 based on the BOP’s exercise of that discretion. Id. at 1227 (dismissing federal  
20 habeas petition asking for petitioner to be reinstated in prison drug treatment  
21 program; district court had no subject matter jurisdiction); see also United States  
22 v. Miller, 594 F.3d 1240, 1242 (10th Cir. 2010) (district court lacks jurisdiction to  
23 override BOP’s “primary authority” over housing decision).

24 Petitioner’s petition and supplemental statement fail to identify a basis for  
25 habeas corpus relief under Section 2241. Petitioner is not entitled to an order of  
26 this Court intervening in the designation of his housing assignment. Moreover,  
27 Petitioner fails to state facts sufficient to demonstrate that his claims of  
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insufficient access to legal materials or allegedly deficient medical treatment violated the Constitution and warrant release from custody. Additionally, the Court will not convert Petitioner's vague claims into a civil rights complaint, as he fails to specifically name potentially culpable individual parties or allege facts adequate to raise a non-speculative constitutional tort claim.<sup>1</sup> Wilwording v. Swenson, 404 U.S. 249, 251-52 (1971).

From the face of the petition, it is clear that Petitioner failed to state a plausible constitutional claim for relief that can properly lead to his release from custody under Section 2241. For the reasons set forth above, the Court DISMISSES this action without prejudice.

IT IS SO ORDERED.

DATED: November 23, 2015

  
 HON. MARGARET M. MORROW  
 SENIOR UNITED STATES DISTRICT JUDGE

Presented by:

  
 HON. MICHAEL R. WILNER  
 UNITED STATES MAGISTRATE JUDGE

<sup>1</sup> The Court takes judicial notice of Petitioner's previous attempts while in custody to file civil rights actions naming other federal defendants; the Court dismissed both actions as frivolous and for failing to adequately state a cause of action. Orr v. U.S. Air Force, CV 15-1800 MMM (MRW) (C.D. Cal.); Orr v. U.S. Air Force, CV 15-2880 MMM (MRW) (C.D. Cal.).